

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-219619.2

DATE: January 16, 1986

MATTER OF: OTKM Construction Incorporated--Request
for Reconsideration

DIGEST:

1. Discrepancy in bid between stated total of lump sum and extended price items and the correct mathematical total of such items may be corrected so as to displace another, otherwise low offer where both the intended bid price and the nature of the mistake are apparent on the face of the bid. Contracting officer did not lack a reasonable basis for determining that--in view of the consistency between the correct mathematical total of the items, the intermediate subtotals of the items and the individual item prices--the bidder intended its bid price to be the correct mathematical total rather than the stated total of the items.
2. Protest that it was improper for the contracting officer to receive bidder's advice concerning possible mistake in bid prior to determining the intended bid or for the contracting officer to advise protester of the apparent mistake prior to requesting verification from the bidder is denied. Since the contracting officer suspected a mistake in bid, he was required to request from the bidder a verification of the bid, calling attention to the suspected mistake. Even if he first informed the protester of the apparent mistake, it has not been shown how this prejudiced the protester.

OTKM Construction Incorporated (OTKM) requests reconsideration of our decision in OTKM Construction Inc., B-219619, Sept. 5, 1985, 64 Comp. Gen. ___, 85-2 C.P.D. ¶ 273, wherein we denied its protest against the determination by the Forest Service, U.S. Department of

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Agriculture, to permit correction of the bid submitted by Marvin L. Cole General Contractor, Inc. (Cole), in response to invitation for bids No. R6-85-27C for the construction of the Mount St. Helens Visitor Center in the Gifford Pinchot National Forest, Washington. We affirm our prior decision.

The solicitation schedule included 33 items divided among five groups. For some items bidders were to enter unit and extended prices based upon the estimated quantity involved; other items were bid upon a lump sum or "each" basis. At the foot of each of the five groups of items a blank was provided for the entry of a subtotal and at the bottom of the last page of the four-page schedule was another blank for "TOTAL ALL ITEMS--BUILDING, SITE, SEWERAGE AND ROAD."

Of the six bids received, OTKM submitted the apparent low bid of \$2,924,409.90, while Cole submitted the apparent second low bid of \$2,953,350.

Upon examining Cole's bid, the Forest Service noted that the unit prices were properly extended, except for the rounding off of some item prices and a \$1 error in one extension. The subtotals of all five groups also were the correct mathematical totals of the item prices. The only discrepancy was between the amount Cole entered for "TOTAL ALL ITEMS"--\$2,953,350--and the correct mathematical total of the subtotals for the five groups--\$2,890,987--a difference of \$62,363. In view of the consistency of the rest of the bid, contracting officials determined that Cole had made an apparent clerical error in calculating the stated total bid price for all items. Accordingly, they determined that Cole's bid was subject to correction to reflect an intended bid price of \$2,890,985.16, which is the correct mathematical total of all the items when the extended prices are not rounded off. When contacted to verify its bid price, Cole confirmed that the mistake occurred in adding the item prices rather than in calculating the item prices themselves.

OTKM, however, then protested to the Forest Service against permitting correction of Cole's bid and making award to Cole. When the agency denied that protest, OTKM filed a protest with our Office.

As we indicated in our prior decision, where the bid contains a price discrepancy, and the bid would be low on the basis of one price but not the other, correction is not

allowed unless the asserted correct bid is the only reasonable interpretation ascertainable from the bid itself or on the basis of logic and experience. The bid cannot be corrected if the discrepancy cannot be resolved without resort to evidence that is extraneous to the bid and has been under the control of the bidder. See Frontier Contracting Co., Inc., B-214260.2, July 11, 1984, 84-2 C.P.D. ¶ 40; Harvey A. Nichols Co., B-214449, June 5, 1984, 84-1 C.P.D. ¶ 597.

We noted that not only were the unit prices in Cole's bid generally properly extended, but, most significantly, the subtotal for each group of items was the correct mathematical total of the item prices in that group. Given this internal consistency in Cole's bid, we were unwilling to question the Forest Service's determination that the only reasonable interpretation of the discrepancy was that Cole had intended its bid price to be the correct mathematical total of the item prices rather than the stated total entered at the bottom of the last page of the schedule. Moreover, we also found that the nature of all but \$5 of the discrepancy--a sum which we considered to be de minimis--could be determined without benefit of advice from the bidder.

In its request for reconsideration, OTKM argues that our prior decision is inconsistent with the decisions of the court in McCarty Corp. v. United States, 499 F.2d 633 (Ct. Cl. 1974), and in Armstrong & Armstrong, Inc. v. United States, 356 F. Supp. 515 (E.D. Wash. 1973), aff'd 514 F.2d 402 (9th Cir. 1975). We disagree, since we consider the facts in these cases to be distinguishable from the circumstances here.

In both McCarty and Armstrong there existed a discrepancy between the stated total of the item prices and the correct, mathematical total of the items. In neither case, however, was there any internal consistency or other indication in the bid suggesting that either the stated total or the correct mathematical total of the item prices was more likely to be the intended bid price. There was no indication in McCarty that the item prices were other than lump sum prices, while in Armstrong the schedule included lump sum items as well as items whose price was based upon stated unit and extended prices, Armstrong, 356 F. Supp. 514, 516. Since, therefore, it was unclear whether the mistake was in one or more of the individual item prices or in the stated total of the item prices, the intended bid

price could not be ascertained from the face of the bid and the court held that the agency had acted improperly in permitting correction so as to displace the otherwise low bidder. McCarty, 499 F. Supp. 633, 638; Armstrong, 514 F.2d 402, 403.

By contrast, here the items were divided into five groups and the subtotal for each group of items in Cole's bid was the correct, mathematical total of the item prices in that group. Given this consistency between the individual item prices and the subtotals for each group, we do not believe that the Forest Service lacked a reasonable basis for concluding that the only reasonable interpretation of the discrepancy was that the mistake was in the stated total of the item prices and that Cole had intended its bid price to be the correct mathematical total of the item prices.

OTKM also argues that in our prior decision we ignored several irregularities in Cole's verification of its intended bid price. OTKM first claims that the contracting officer had received the advice of Cole prior to making a determination as to the bid intended and then claims that the contracting officer advised OTKM of the apparent mistake in Cole's bid and of the bid price apparently intended prior to requesting verification from Cole. In addition, OTKM points out that Cole, in its July 23, 1985 written verification of its intended bid, listed its intended bid price as totaling \$2,890,897, rather than \$2,890,985.16, the correct, mathematical total of all items when the extended prices are not rounded off.

The fact that the contracting officer may have contacted Cole to request verification of its intended bid price does not establish that Cole's input was necessary for determining the intended bid. See Harvey A. Nichols Co., B-214449, June 5, 1984, 84-1 C.P.D. ¶ 597 at 4. Rather, the Federal Acquisition Regulation (FAR), 48 C.F.R. pts. 1-53 (1984), requires that

"where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall require from the bidder a verification of the bid, calling attention to the suspected mistake." (Emphasis added.)

48 C.F.R. § 14.406-1; see 48 C.F.R. § 14.406-3(g)(1)(iv). We note that the failure of a contracting officer to draw the bidder's attention to the mistake suspected and the

basis for the suspicion may result in an inadequate verification request and, therefore, in an award which does not result in a binding contract. See Ziegler Steel Service Corp., B-195719, Jan. 14, 1980, 80-1 C.P.D. ¶ 40; Y.T. Huang and Associates, Inc., B-192169, Dec. 22, 1978, 78-2 C.P.D. ¶ 430.

If, on the other hand, the contracting officer first informed OTKM of the mistake which was apparent on the face of Cole's bid prior to requesting verification from Cole, then we fail to see how this action, however unusual, prejudiced OTKM.

We also do not see how the minor mistake in Cole's written verification of its intended bid price prevents correction here. Since Cole apparently had previously verified that it had intended a bid price of \$2,890,987, the total of all the items after Cole had rounded off the extended prices, and since the mistaken figure of \$2,890,897 was entered as the total of a column of figures--representing the sums of the item prices on each page of the schedule--which in fact totaled \$2,890,987, we consider Cole merely to have made an insignificant transposition error in entering its intended bid price in the written verification.

OTKM's remaining arguments in its request for reconsideration are mere restatements of its previous contentions that under our caselaw Cole should not have been permitted to correct its bid and that Cole's bid should have been rejected as nonresponsive. We remain unconvinced by these arguments.

OTKM has failed to demonstrate any error of law or fact warranting reversal or modification of our prior decision. See Ross Bicycles, Inc.--Request for Reconsideration, B-219485.2, July 31, 1985, 85-2 C.P.D. ¶ 110. Accordingly, our prior decision is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel